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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,165	09/19/2003	Timothy J. Bomya	5701.00297	7103
26659	7590	01/25/2006		
RAGGIO & DINNIN, P.C. 2701 CAMBRIDGE COURT, STE. 410 AUBURN HILLS, MI 48326			EXAMINER WHITTINGTON, KENNETH	
			ART UNIT 2862	PAPER NUMBER

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

EF

Office Action Summary	Application No. 10/666,165	Applicant(s) BOMYA, TIMOTHY J.	
	Examiner Kenneth J. Whittington	Art Unit 2862	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 11, 13, 14, 16-19 and 30 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 20 is/are rejected.
- 7) ☒ Claim(s) 6-9, 12, 15, 21-29 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Bot Ledynh
Primary Examiner

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Response to Arguments***

Applicant's Amendment and arguments filed therewith on December 22, 2005, with respect to the claims in view of the prior art have been fully considered and are persuasive. The rejections of the claims in view of the prior art have thus been
7 withdrawn. However, in view of the prior patents of the Applicant, the status of the claims is outlined below.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
14 improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the
21 examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

28 A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claims 1 and 18 of U.S. Patent No. 6,777,927, at least claims 1 and 10 of U.S. Patent No. 6,587,048, at least claims 1 and 14 of U.S. Patent No. 6,586,926 and at least claims 1, 19 and 21 of U.S. Patent No. 6,433,688. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the claims of the present application are rewritten versions of the claims of the previous patents, the claims are similar in scope.

Allowable Subject Matter

Claims 10, 11, 13, 14, 16-19 and 30 are allowed.

The following is an examiner's statement of reasons for allowance: these claims are allowed for the reasons outlined in the previous Office Action or those reasons outlined by Applicant in the Amendment filed December 22, 2005.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 6-9, 12, 15, 21-29 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7 The following is a statement of reasons for the indication of allowable subject matter: these claims have allowable subject matter for the reasons outlined in the previous Office Action or those reasons outlined by Applicant in the Amendment filed December 22, 2005.

14 It is further noted that all claims are allowable/allowed if Applicant files a proper terminal disclaimer to overcome the double patenting rejection noted above.

Conclusion

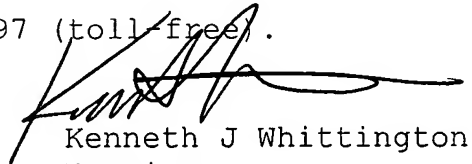
21 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth J. Whittington whose telephone number is (571) 272-2264. The examiner can normally be reached on Monday-Friday, 7:30am-4:00pm.

 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be

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reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications
7 may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kenneth J Whittington
Examiner
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kjw